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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

KIARA ROBLES,

Plaintiff,

v.

IN THE NAME OF HUMANITY, WE
 REFUSE TO ACCEPT A FASCIST
 AMERICA (a.k.a. ANTIFA), CITY OF
 BERKELEY, ET AL.,

Defendants.

No. 4:17-cv-04864 CW

**DEFENDANT CITY OF BERKELEY'S
 RESPONSE TO SUPPLEMENTAL
 OPPOSITION TO MOTION TO REVOKE
 PRO HAC VICE ADMISSION OF LARRY
 KLAYMAN**

Date: UNDER SUBMISSION
 Time: N/A

On May 23, 2018, the Court issued a Notice of Tentative Ruling on Motion to Revoke Pro Hac Vice. ECF Doc. # 49. The Court indicated its intention to grant the City of Berkeley's motion to revoke the *pro hac vice* admission of plaintiff's attorney, Larry Klayman. A hearing on the motion was set for July 17, 2018, and at the hearing, the Court granted Mr. Klayman's request to submit additional briefing, allowing him to file no more than "five pages of argument" and documentation related to disciplinary proceedings in the D.C. Circuit or Florida that post-date Mr. Klayman's May 23, 2018 court filings. ECF Doc. # 71, Ex. 2 (7/17/18 Reporter's Transcript of Proceedings) ("RT") at 5:12-17; 15:16-17.

Mr. Klayman makes five main arguments against the Court's tentative decision to revoke his *pro hac vice* status, which the City discusses in detail below.

I. Mr. Klayman Misrepresents the Status of the D.C. Bar's Disciplinary Determinations

Mr. Klayman misrepresents the status of the disciplinary proceedings against him by the District of Columbia Bar ("D.C. Bar"), arguing that he has "never been suspended from the practice of law even for one day," and failing to tell the Court that his 90-day suspension from practicing law is not one of the issues currently on appeal to the D.C. Circuit.

As Mr. Klayman admits, the D.C. Bar's Hearing Committee # 9 ("the Committee") sustained all charges against him and recommended a 90-day suspension from the practice of law, making readmission contingent upon a showing of fitness to practice law.¹ ECF Doc. # 71 (Supp. Opp.) at 2:11-15. Mr. Klayman appealed the Committee's recommendation. *See* ECF Doc. 50-1 (Ex. 1) (D.C. Court of Appeals Board on Professional Responsibility, Report and Recommendation) at p. 1 ¶ 3) (Mr. Klayman "timely filed exceptions to the Hearing Committee's Report.").

On February 6, 2018, the D.C. Bar's Board of Professional Responsibility ("the Board") upheld the Hearing Committee's "factual findings" with one exception related to whether Mr. Klayman "gave false testimony during the hearing." *Id.* at 2 ¶ 1. Mr. Klayman argues to this Court that he is vindicated by the Board's determination that counsel for the D.C. Bar "failed to prove dishonesty by clear and convincing evidence." *Id.* at p. 17 ¶ 2; *see* Supp. Opp. at 2:11-19; *see* ECF Doc. # 71 Ex. 2 (RT) at 5:5-15.

However, Mr. Klayman fails to inform this Court that it was the D.C. Bar's Office of Disciplinary Counsel ("ODC") that appealed the Board's findings and recommendation to the D.C. Court of Appeals, not Mr. Klayman. He also fails to mention that the issues on appeal are

¹ At the July 17, 2018 hearing, Mr. Klayman complained there were "factual errors, gross factual errors" in the Court's tentative ruling. ECF Doc. # 71 Ex. 2 (RT) at 9:21-24. Mr. Klayman may be referring to the Court's identification of the body that issued the June 19, 2017 Report as "the Board" rather than "Hearing Committee Number Nine," even though the Tentative Ruling makes clear that the Court is quoting from the Hearing Committee's June 19, 2017 Report, and not the Board's February 6, 2018 Report. *Id.* at 5:2-23.

whether the Board erred in rejecting the Hearing Committee’s conclusion about whether Mr. Klayman gave false testimony, and whether the 90-day sanction should include “a fitness showing for reinstatement.” Supp. Bourgault Dec. Ex. 1 (Brief of Disciplinary Counsel, Disciplinary Docket No. 2008-D048, DCCA No. 18-BF-100) at p. vii, pp. 1-4). The ODC’s brief expressly states that “Mr. Klayman did not file an exception” to the Board’s February 6, 2018 Report and Recommendation. *Id.* at p. 4 ¶ 3. In other words, Mr. Klayman did not appeal the 90-day suspension recommendation. Thus, contrary to what Mr. Klayman argued to this Court at the hearing on this matter on July 17, 2018, and what he argues in supplemental briefing, Mr. Klayman’s 90-day suspension is not on appeal before the D.C. Circuit. *See* ECF Doc. # 71 (Ex. 2) (RT at 8:23-25; 11:3-5). The only issues on appeal in the D.C. Circuit are whether Mr. Klayman provided false testimony, and whether he will be required to show “fitness” before being readmitted after his 90-day suspension. *Id.* at p. 4, ¶ 2.

Mr. Klayman admits he did not appeal his 90-day suspension. Mr. Klayman on July 3, 2018 filed a lawsuit in the District Court for the District of Columbia against the D.C. Bar’s Office of Disciplinary Counsel (“ODC”) and four lawyers from the ODC in their individual capacities. In his Complaint, Mr. Klayman asserts that it was the ODC that filed an “assignment of error to the Board’s decision to remove the reinstatement provision in the Judicial Watch Complaint.” *See* Supp. Bourgault Dec. Ex. 2 (*Klayman v. Hamilton Fox, et. al.*, D.C. Case No. 1:18-cv-01579-RDM, ECF Doc. # 1 at ¶ 48). Thus, it is not true, as Mr. Klayman claims, that the Board’s recommendation to suspend him for 90 days “is not final.” Although the matter is still pending, and the suspension has not yet taken effect, the D.C. Circuit has not been asked to review the 90-day suspension.

II. Mr. Klayman Improperly Relies on a Dissenting Opinion to Argue He “Didn’t Do Anything Wrong”

At the hearing, and in his opposition papers, Mr. Klayman improperly relies on a dissenting opinion in *In re Bundy*, 840 F.3d 1034, 1054 (9th Cir. 2016), to claim that it has been judicially determined he has done “nothing wrong.” ECF Doc. # 71 (RT) at 8:16-19. As Mr. Klayman should know, dissenting opinions do not state the official ruling of the case, and all of the “sanctioned, sanctionable, or questionable behavior” outlined by the Ninth Circuit in *Bundy*, and summarized in the Court’s Tentative Ruling, are controlling. ECF Doc. # 49 at 2:20-4:23.

III. Mr. Klayman Falsely Asserts He Never Accused the Court of Bias

Mr. Klayman claimed at the July 17, 2018 hearing in this matter that he “didn’t ever move to disqualify” the Court based on bias, but merely made “a suggestion of recusal” based on an “appearance” of bias. ECF Doc. # 71 (RT) at 9:13-16. While it is true that plaintiff styled her disqualification motion as a “Request for Voluntary Recusal” (*see Robles v. Regents of the University of California Berkeley*, Case No. 4:17-cv-03235-CW, ECF Doc. # 50) (“*Robles I*”), Mr. Klayman later stated that the Court’s Notice of Tentative Ruling on this motion “provides further evidence that this Court suffers from extrajudicial bias and prejudice against” him. ECF Doc. # 50 at 2:4-6.

IV. Mr. Klayman’s Certificate of Good Standing is Untimely and Deficient

Mr. Klayman belatedly submitted a Certificate of Good Standing from the Supreme Court of Florida. *See* ECF Doc. # 71 p. 7. However, this Certificate is dated January 4, 2018, four months after the date on which Mr. Klayman filed his application to be admitted *pro hac vice* with this Court on August 22, 2017. *See* ECF Doc. # 2. Therefore, the Certificate cannot cure the defect in his application, which, pursuant to Local Rule 11-3, was required to be submitted with a certificate of good standing issued *before* the date of the application, not after.

V. The Court Should Disregard the Untimely Declarations Submitted with the Supplemental Opposition

Mr. Klayman claims (and belatedly submits evidence) that plaintiff Kiara Robles will lose any chance at legal representation if his *pro hac vice* status is revoked. *See* Doc. # 71, Exh. 3

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